

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

2:92-cr-0315-GEB-PAN-P

vs.

CHARLES D. MATLOCK,

Movant.

ORDER

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Movant, a federal prisoner proceeding pro se, has timely filed a notice of appeal of this court's April 4, 2006 denial of his motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255, together with a request for a certificate of appealability, see 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b), and a motion for leave to proceed in forma pauperis on appeal.

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

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1 For the reasons set forth in the magistrate judge's February 8, 2006 findings and
2 recommendations, movant has not made a substantial showing of the denial of a constitutional
3 right. Accordingly, movant's request for a certificate of appealability will be denied.

4 Movant has also filed a motion for leave to proceed in forma pauperis on appeal.
5 Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs
6 of suit. Accordingly, petitioner's motion for leave to proceed in forma pauperis on appeal will be
7 granted. See 28 U.S.C. § 1915(a).

8 In accordance with the above, IT IS HEREBY ORDERED that:

9 1. Movant's May 5, 2006 motion for leave to proceed in forma pauperis on
10 appeal is granted;

11 2. Movant's May 5, 2006 request for a certificate of appealability is denied; and

12 3. The Clerk of the Court is directed to process movant's notice of appeal to the
13 United States Court of Appeals for the Ninth Circuit.

14 Dated: October 3, 2006

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16 /s/ Garland E. Burrell, Jr.
GARLAND E. BURRELL, JR.
17 United States District Judge
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